

Meyer v. Datesh

William Thomas Meyer v. Paula Datesh (a/k/a Ann Treboux)

COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION
FIVE Oct 30, 2018 Full title
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NEEDHAM, J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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Paula Datesh, appearing *in propria persona*, appeals from a civil harassment restraining order issued against her and in favor of respondent William Thomas Meyer. (Code [Civ. Proc., § 527.6](#).) She argues that Meyer did not prove a credible threat of violence or criminal stalking. We conclude the record on appeal is insufficient to support her argument and that in any event, Meyer was not required to prove criminal stalking. We affirm.

Further references are to the Code of Civil Procedure unless otherwise indicated. -----

I. FACTS AND PROCEDURAL HISTORY

Meyer and Steve Pogni sell Venetian masks from a booth. On December 5, 2016, Meyer filed a Request for Civil Harassment Restraining Orders, Judicial Council Form No. CH-100, seeking a restraining order against Datesh. He alleged, "Paula [Datesh] came over to the booth and elbowed an elderly customer out of the way. She started taking pictures of me and the merchandise without my permission. She then picked up a mask and threw it at me and Steve. We called the police. The police talked to her. Afterwards Paula came back and said, 'I'm going to kill both you faggots for turning me in to the police.'" According to Meyer, "I was mentally harmed. I feel unsafe. I don't want to be in a situation where I have to defend myself. I don't want to cause harm to anyone."

The court set a hearing for December 28, 2016. It issued a temporary restraining order (TRO) on December 6, 2016, requiring Datesh to stay three yards away from Meyer and to refrain from harassing him, contacting him, or taking steps to obtain his address or location.

A hearing was held on December 28, 2016, at which Datesh apparently did not appear. The court issued a Civil Harassment Restraining Order After Hearing, Judicial Council Form No. CH-130. (§ 527.6.) The order requires Datesh to stay 10 yards away from Meyer and to refrain from harassing him, contacting him, or taking steps to obtain his address or location. It expires on December 28, 2018.

Datesh filed a notice of appeal from the December 28 civil restraining order on December 29, 2016. Also on that date, she filed a Response to Request for Civil Harassment Restraining Orders, Judicial Council Form No. CH-120.

II. DISCUSSION

A. Introduction

Section 527.6, subdivision (a)(1) provides that "[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section." Within 21 days from the date the petition for a TRO is granted or denied, or if good cause appears within 25 days, the court shall hold a hearing on the petition. (§ 527.6, subd. (g).) At the hearing, the judge "shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment." (*Id.* subd. (i).)

Section 527.6, subdivision (b)(3) defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." A "[c]redible threat of violence" is defined as "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.6, subd. (b)(2).) "Unlawful violence" is defined as "any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others." (§ 527.6, subd. (b)(7).)

The issuance of a restraining order is reviewed for abuse of discretion. (*Parisi v. Mazzaferro* (2016) [5 Cal.App.5th 1219, 1226](#).) "We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court's findings. [Citation.] Declarations favoring the prevailing party's contentions are deemed to establish the facts stated in the declarations, as well as all facts which may reasonably be inferred from the declarations; if there is a substantial conflict in the facts included in the competing declarations, the trial court's determination of the controverted facts will not be disturbed on appeal." [Citation.] Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo." (*Ibid.*, see also *R.D. v. P.M.* (2011) [202 Cal.App.4th 181, 188](#).)

B. Discussion

Here, the record on appeal shows that the trial court granted a restraining order after a hearing on December 28, 2016, but it does not include a transcript from the hearing. "Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.] Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment. [Citation.] As has occurred here, appellant is effectively deprived of the right to appeal." (*Randall v. Mousseau* (2016) [2 Cal.App.5th 929, 935](#).)

Even if we did not fault Datesh for failing to provide an adequate record on appeal, we would reject her claims. Datesh argues primarily that Meyer failed to prove stalking under [Penal Code section 646.9](#), but he sought a civil restraining order under section 527.6 and was not required to prove the elements of a criminal charge. (See *Brekke v. Wills* (2005) [125 Cal.App.4th 1400, 1413](#).) Datesh urges us to disbelieve Pogni, who is not a party to this action, and notes that Meyer failed to file a tort action. It is inappropriate for us to reweigh the evidence on appeal. (*In re Marriage of Jill and Victor D.* (2010) [185 Cal.App.4th 491, 503](#).) Finally, we have no trouble concluding that Datesh's threat to kill Meyer, coupled with an epithet, was sufficient to constitute a credible threat of violence under section 527.6, subdivision (b) if believed by the trial court.

III. DISPOSITION

The judgment (restraining order under § 527.6) is affirmed. Each side shall bear its own costs in the interests of justice. ([Cal. Rules of Court, rule 8.278\(a\)\(5\).](#))

/s/ _____

NEEDHAM, J. We concur. /s/ _____
JONES, P.J. /s/ _____
SIMONS, J.